

9433.1987(14)

ENFORCEMENT OF APPLICABLE RCRA REGULATIONS AT FACILITIES WITH
PENDING DELISTING PETITIONS

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

JUL 20 1987

MEMORANDUM

SUBJECT: Enforcement of Applicable RCRA Regulations at Facilities
with Pending Delisting Petitions

FROM: Gene A. Lucero, Director
Office of Waste Programs Enforcement

Marcia E. Williams, Director
Office of Solid Waste

TO: Waste Management Division Directors
Regions I, IV, V, VII, & VIII

Air & Waste Management Division Director
Region II

Hazardous Waste Management Division Director
Region III, VI, & X

Toxics & Waste Management Division Director
Region IX

The purpose of this memorandum is to restate Agency policy regarding the enforcement of applicable RCRA regulations at hazardous waste handlers that have pending delisting petitions. It has come to our attention that some Regions and States may be allowing non-compliance with some or all of the RCRA Subtitle C requirements pending a decision on active delisting petitions. We are reaffirming here that these wastes remain hazardous wastes and that they, and the units in which they are managed, are subject to all applicable RCRA regulations, including financial responsibility, groundwater monitoring and closure requirements, until the delisting is officially granted. In addition, facilities are still subject to the 1988 and 1989 statutory deadlines for permit issuance.

RO 12980

Sections 260.20 and 260.22 establish a petition process which allows a facility to demonstrate that its waste, although captured by the broad listings of Section 261 Subpart D, does not meet any criteria under which the waste was listed, including the presence of additional constituents. Decisions on waste delisting have always been based on a chemical characterization of the waste itself and of the processes generating that waste, not on facility design, management practices or site conditions. Therefore, until a final decision is made to grant the petition, the waste is hazardous and the facility remains subject to enforcement of all applicable regulations (including compliance with Subpart F groundwater monitoring requirements). Facilities that are not in compliance with RCRA regulations are subject to enforcement action.

Concomitantly, facilities (excluding those with temporary or informal exclusions) that had pending delisting petitions on November 8, 1985, were subject to the Loss of Interim Status (LOIS) provision of the Hazardous and Solid Waste Amendments of 1984 (HSWA). Facilities that failed to validly certify compliance with Subparts F and H and submit a Part B application for an operating permit on or before November 8, 1985 were required to cease operating their hazardous waste land disposal units and submit a closure plan for those units by November 23, 1985. Facilities with pending delisting petitions that failed to retain interim status and continued to operate after November 8, 1985, and/or failed to submit the required closure plan are subject to enforcement actions under Section 3008 or RCRA.

1 Facilities whose only waste was subject to a temporary or informal exclusion were not required to meet Part 265 standards during the effective time of the exclusion. However, all temporary and informal exclusions that had not previously been acted on expired by statute on 11/8/86 (section 3001(f)(2)(8)). Facilities that had either a temporary or informal exclusion were in one of four categories on 11/8/86: (1) the final delisting was granted and that waste is no longer subject to regulation under RCRA; (2) the petition was denied when, after repeated requests from the Agency, the facility failed to provide additional information for the petition; these facilities had to be in compliance with Part 265 regulations immediately;

(3) the completed petition was denied based on the merits of the petition (i.e., the waste was determined to be hazardous); these facilities had six months from the date of publication of the denial in the Federal Register to come into compliance with Part 265 standards; or (4) the exclusion expired by statute; these facilities petitions moved back into the standard delisting process and the facilities were immediately subject to all applicable RCRA requirements.

Attachment 1 is a listing of all pending delisting petitions, broken down by Region. Please assure that these facilities are in full compliance with all applicable RCRA regulations. If you have any questions regarding the iteration of this policy, please call Steve Heare at 382-2207.

cc: Elaine Stanley
Bruce Weddle
RCRA Branch Chiefs, Region I-X